

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

DIANA CENCETTI, INDIVIDUALLY,	§	
& AS PERSONAL	§	
REPRESENTATIVE OF THE ESTATE	§	
OF DAVID MALDONADO,	§	
DECEASED,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	CIVIL ACTION NO. 5:20-cv-1395
	§	
AGCO CORPORATION,	§	
<i>Defendant.</i>	§	JURY REQUESTED

DEFENDANT AGCO CORPORATION'S NOTICE OF REMOVAL

TO: THE CLERK OF COURTS AND THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURTS FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION

Pursuant to 28 U.S.C. §§ 1332, 1441(b), and 1446, Defendant AGCO Corporation ("AGCO") hereby files this Notice of Removal of the action styled *Diana Cencetti, Individually, & as Personal Representative of The Estate of David Maldonado, Deceased, v. AGCO Corporation*, Cause No. C20202-1892A, from the 22nd Judicial District Court, Comal County, Texas, where the action now is pending, to the United States District Court for the Western District of Texas, San Antonio Division, on the basis of diversity of citizenship and the amount in controversy, and respectfully shows the following:

I. INTRODUCTION

1. On November 9, 2020, Plaintiff Diana Cencetti, Individually and as Personal Representative of the Estate of David Maldonado, Deceased, filed her Original Petition, styled *Diana Cencetti, Individually, & As Personal Representative Of The Estate Of David*

Maldonado, Deceased, Cause No. C20202-1892A, in the 22nd Judicial District Court, Comal County, Texas.

2. Defendant AGCO was served with the citation and Original Petition on November 16, 2020.

3. No other pleadings have been served upon AGCO, and no other orders have been entered by the Court.

4. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because it is filed within 30 days of AGCO's receipt of the citation and Original Petition, and within one year of the commencement of the action.

II. BASIS FOR REMOVAL: DIVERSITY JURISDICTION

5. Removal is proper based on diversity of citizenship between the parties under 28 U.S.C. §§ 1332(a), 1441(a) and 1446.

A. PLAINTIFF AND DEFENDANT ARE DIVERSE.

6. Upon the investigation and good faith belief, as pled in the Original Petition, Plaintiff Diana Cencetti is, and was at the time the lawsuit was filed, a resident of Comal County, Texas, and a citizen of the State of Texas.

7. By contrast, Defendant AGCO Corporation is a Delaware corporation organized under the laws of the State of Delaware and maintains its principal place of business in Duluth, Georgia. Accordingly, AGCO is a citizen of both Delaware and Georgia.

B. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.

8. This is a civil action in which the amount in controversy exceeds \$75,000.00. As set forth on the face of the Original Petition, Plaintiff has pled “for monetary relief over \$1,000,000.00.” *See* Original Pet., Exhibit B, ¶ 8. In addition, Plaintiff seeks to recover exemplary damages, interest, “costs of court, and such other and further relief to which the Plaintiffs may be entitled at law or in equity.” *Id.* at ¶ 41.

9. Because it is clear from the face of the Original Petition that Plaintiff’s alleged damages as pled exceed \$75,000.00, removal is proper.

III. VENUE

10. Pursuant to 28 U.S.C. § 1441(a), venue is proper in this Court for purposes of removal only because it is the district and division embracing the place where such action is pending, the 22nd Judicial District Court of Comal County, Texas.

IV. PROCEDURAL REQUIREMENTS FOR REMOVAL

11. AGCO has complied with all applicable provisions of 28 U.S.C. §1441 *et seq.*, and the applicable Federal Rules of Civil Procedure.

12. AGCO attaches hereto those materials required to be filed upon removal in accordance with 28 U.S.C. § 1446(a). Specifically, this Notice of Removal is accompanied by copies of the following:

EXHIBIT A: Index of Documents Being Filed;

EXHIBIT B: Plaintiff’s Original Petition in Cause No. C20202-1892A;

EXHIBIT C: Request for Process in Cause No. C20202-1892A;

EXHIBIT D: Citation Issued to AGCO Corporation in Cause No. C20202-1892A,
with Affidavit of Service; and

EXHIBIT E: List of Counsel of Record.

13. This Notice of Removal is being filed within 30 days of service of the citation and Plaintiff's Original Petition, and is thus timely filed under 28 U.S.C. §1446(b). There exists an actual and justiciable controversy between Plaintiff and Defendant with regard to the legal issues herein and this controversy is within the jurisdiction of this Court.

14. Based upon information and belief, pursuant to 28 U.S.C. § 1446(a), all pleadings, process, orders and all other filings in the state court action are attached to this Notice.

15. Pursuant to 28 U.S.C. § 1446(d), written notice of filing of this Notice of Removal will be given to all adverse parties promptly after the filing of same.

16. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of the Notice of Removal will be filed with the District Clerk for the 22nd Judicial District Court of Comal County, Texas promptly after filing of same.

17. Additionally, the applicable filing fee for removal has been tendered to the Clerk of the United States District Court for the Western District of Texas, San Antonio Division, along with the original Notice of Removal.

18. AGCO reserves the right to amend or supplement its Notice of Removal.

19. By filing this Notice of Removal, AGCO does not waive, and expressly reserves its right to assert any and all procedural and/or substantive defenses, claims, pleas, or motions, including, if any, pleas in abatement, motions to compel arbitration, and

motions permitted by Rule 12 of the Federal Rules of Civil Procedure, including those defenses of lack of personal jurisdiction and improper venue.

20. AGCO requests a trial by jury.

21. No previously application has been made for the relief requested herein.

WHEREFORE, Defendant AGCO Corporation gives notice that this action now pending against it in the 22nd Judicial District Court, Comal County, Texas, is removed to this Court on this 7th date of December 2020.

Respectfully submitted,

LORANCE THOMPSON, P.C.

/s/ Robert G. Smith

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Attorneys for Defendant, AGCO Corporation

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing *Defendant AGCO Corporation's Notice Of Removal* was filed and served electronically on this 7th day of December, 2020, upon the following:

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/s/ Robert G. Smith

Robert G. Smith